92-1314

No. _____

Supreme Court, U.S.
FILED
FEB 5 1993
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

STATE OF MARYLAND,

Petitioner,

v.

RICKY DARDEN,

Respondent.

Petition For A Writ Of Certiorari To The Court Of Special Appeals Of Maryland

---

PETITION FOR A WRIT OF CERTIORARI

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

GARY E. BAIR*
MARY ELLEN BARBERA
THOMAS K. CLANCY
Assistant Attorneys General

200 Saint Paul Place
Baltimore, Maryland 21202
(410) 576-6422

Counsel for Petitioner

**Counsel of Record*

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTION PRESENTED

Where police, notwithstanding their efforts to conform to the law, illegally seize and detain a traveler's luggage, and thereafter fully disclose the facts surrounding the seizure and detention in an application for a warrant to search the luggage, does the good faith doctrine of *United States v. Leon* render the exclusionary rule inapplicable to evidence obtained as a result of the warrant's execution?

PARTIES

The caption contains the names of all the parties below.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES	ii
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	2
CONSTITUTIONAL PROVISION INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	8
THE FEDERAL COURTS OF APPEAL ARE IN DIRECT CONFLICT ON THE FREQUENTLY RECURRING ISSUE OF WHETHER THE GOOD FAITH DOCTRINE OF *UNITED STATES v. LEON* APPLIES TO THE EXECUTION OF SEARCH WARRANTS BASED ON UNLAWFUL DETENTIONS OF A TRAVELER'S LUGGAGE	8
CONCLUSION	13
APPENDIX	1a

TABLE OF AUTHORITIES

Cases:	Page
People v. Breeding, 579 N.E.2d 1128 (Ill. App. 1991), *cert. denied*, 587 N.E.2d 1018 (Ill.), *cert. denied*, 112 S. Ct. 3034 (1992)	11
State v. Darden, 328 Md. 447 (1992)	2
State v. Darden, 93 Md. App. 373, 612 A.2d 339 (1992)	1
United States v. Calandra, 414 U.S. 388 (1974)	9
United States v. Carmona, 858 F.2d 66 (2d Cir. 1988)	10
United States v. Dicesare, 765 F.2d 890, *modified on other grounds*, 777 F.2d 543 (9th Cir. 1985)	12
United States v. Hall, 978 F.2d 616 (10th Cir. 1992)	11
United States v. Kiser, 948 F.2d 418 (8th Cir. 1991), *cert. denied*, 112 S. Ct. 1666 (1992)	10
United States v. Leon, 468 U.S. 897 (1984)	9,10
United States v. Millan, 912 F.2d 1014 (8th Cir. 1990)	12
United States v. Payner, 447 U.S. 727 (1980)	9
United States v. Scales, 903 F.2d 765 (10th Cir. 1990)	11
United States v. Solomon, 728 F. Supp. 1544 (S.D. Fla. 1990)	11
United States v. Thomas, 757 F.2d 1359 (2d Cir.), *cert. denied*, 474 U.S. 819 (1985)	10
United States v. Thornton, 746 F.2d 39 (D.C. Cir. 1984)	10
United States v. Vasey, 834 F.2d 782 (9th Cir. 1987)	11
United States v. White, 890 F.2d 1413 (8th Cir. 1989), *cert. denied*, 497 U.S. 1010 (1990)	10

Table of Authorities Continued

	Page
Wong Sun v. United States, 371 U.S. 471 (1963) .	11
Constitutional Provision:	
United States Constitution, Fourth Amendment ...	2,8,12
Statute:	
28 U.S.C. § 1257(a)	2
Rule:	
Rule 13, Rules of the Supreme Court	2
Miscellaneous:	
Wayne R. LaFave, *Search and Seizure* (2d ed. 1987)	11,12
Bruce A. Green, *The Good-Faith Exception to the Fruit of the Poisonous Tree Doctrine*, 26 Crim. L. Bull. 509 (1990)	10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. _____

STATE OF MARYLAND,

Petitioner,

v.

RICKY DARDEN,

Respondent.

Petition For A Writ Of Certiorari
To The Court Of Special Appeals Of Maryland

PETITION FOR A WRIT OF CERTIORARI

Petitioner, the State of Maryland, respectfully requests that a writ of certiorari issue to review the judgment and opinion of the Court of Special Appeals of Maryland.

OPINIONS BELOW

The reported opinion of the Court of Special Appeals of Maryland, *State v. Darden*, 93 Md. App. 373, 612 A.2d 339 (1992), affirming the granting of Respondent's motion to suppress, is reproduced in Appendix A. (1a-35a).

The order of the Court of Appeals of Maryland denying Petitioner's petition for a writ of certiorari,

State v. Darden, 328 Md. 447 (1992), is reproduced in Appendix B. (36a).

The unreported opinion and order of the Circuit Court for Prince George's County granting Darden's motion to suppress is reproduced in Appendix C. (37a-51a).

The search warrant and application for a warrant is reproduced in Appendix D. (52a-58a).

STATEMENT OF JURISDICTION

The order of the Court of Appeals of Maryland denying Petitioner's petition for a writ of certiorari was filed on November 10, 1992. This petition is filed within ninety days of that order, as required by Rule 13 of the Rules of the Supreme Court. Therefore, jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Respondent Ricky Darden was indicted on September 9, 1991, on two counts of possession with intent

to distribute a controlled dangerous substance, one count of possession of a controlled dangerous substance, and one count of transporting a handgun. Darden filed a motion to suppress evidence and a hearing on that motion was held on January 21, 1992, in the Circuit Court for Prince George's County, Maryland.

At the hearing, it was established that, on August 20, 1991, Officer T.N. Mallory, an experienced narcotics investigator and a seven-year veteran of the Metro Transit Police, and Officer Tommy Call, also of the Metro Transit Police, were conducting drug interdiction operations at the New Carrollton Metro Train Station in Prince George's County, Maryland. (37a, 54a).[1] The officers, who were in plain clothes, were attempting to stop the flow of illegal narcotics coming into the area from New York City, a known source city. (37a-38a). Because trains are a common method of transporting illegal drugs, the officers were looking for drug couriers disembarking from the Amtrak train that had just arrived from New York at 1:50 p.m. (37a, 55a). They sought to contact people and to obtain consent to search their bags. (Tr. 4).[2]

Darden was one of 15 to 20 disembarking passengers. (1a-2a). He walked past Mallory and made eye contact with him, which drew Mallory's attention.

---

[1] Officer Mallory, Officer Call, and Respondent Darden testified at the hearing. With one exception, the motion court credited the officers' version of the events, rejecting as "inexact" and "not persuasive," only Officer Mallory's belief that it was unusual for a train passenger to have scant luggage. (44a). The facts summarized in this petition reflect those findings. (37a-40a).

[2] All transcript references are to the suppression hearing held on January 21, 1992.

(37a). Darden then began walking quickly and Mallory followed him from the train station to the subway station. (2a, 37a-38a). Within that short distance, Darden looked over his shoulder four times, each time making eye contact with Mallory. (2a, 37a). Mallory believed that the repeated eye contact was highly unusual. (Tr. 28). Mallory also observed that Darden became very nervous and started to shake. (2a, 37a-38a).

Mallory approached Darden, identified himself as a Metro Transit Police officer, and asked to speak with him. (38a). Darden agreed to talk. (8a, 38a).[3] Mallory explained that he was doing drug interdiction "to stop the illegal flow of narcotics coming from New York City into the metropolitan area." (2a). Darden was shaking and sweating profusely, which was inconsistent with the temperature in the air-conditioned station. (2a). Mallory asked Darden for his train ticket but Darden replied that he did not have one. (38a). After Mallory advised Darden that one needs a ticket to ride the train, Darden "fumble[d]" for it in his wallet. (2a). Mallory observed the ticket in the wallet and directed Darden's attention to it. (2a, 38a). Because of his nervousness, Darden had difficulty removing the ticket. (2a). As to the significance of Darden's nervousness, sweating, and fumbling through his wallet, Mallory declared that, in his interdiction experience, he did not "come across that many people that act in the way Mr. Darden did." (Tr. 29).

Darden gave the ticket to Mallory, who determined that Darden had boarded the train at Penn Station

---

[3] It is undisputed that Darden was not seized at any time during the encounter. (8a).

in New York City. (2a, 38a). In response to Mallory's question, Darden identified himself, spelling his last name as D-A-R-D-O-N. (3a, 38a). Darden then produced an unofficial identification card, which had his last name spelled as D-A-R-D-E-N. (3a, 38a). Mallory considered the discrepancy in the spelling as "very important." (Tr. 34). Mallory returned the card and asked where Darden was going. (3a). Darden replied that he was traveling to his residence at 18408 London Lane in Bowie, Maryland. (3a).

Darden was carrying a sports bag, which he had placed on the ground during the conversation. (Tr. 12, 35-36). When questioned by Mallory, Darden denied carrying a large amount of money or drugs on his person or in the bag. (38a). Darden continued to shake and act nervously. (Tr. 12). Mallory then asked permission to search the bag and Darden consented. (39a). When Mallory opened the bag and began to search it, Darden asked Officer Call, who was standing nearby, if he had to consent to the search. (39a). After Call advised Darden that he did not have to consent, Darden nervously stated to Mallory that he did not want his bag searched. (39a). Mallory thereupon stopped his examination of the bag. (39a).

Darden grabbed the bag and began to walk quickly away. (3a). Mallory then seized the bag and informed Darden that he was going to detain it temporarily until a narcotics detection dog could perform an exterior inspection. (3a, 39a). Mallory informed Darden that he was free to leave or stay until the dog inspected the bag, advising Darden that it would take 10 to 20 minutes for the dog to arrive. (3a, 39a). When Darden expressed his desire to leave, (39a), Mallory again informed him that he was free to go,

(Tr. 13-14). Mallory asked Darden for an address and a telephone number so that, if the dog did not indicate the presence of drugs, the bag could be returned to him. Darden provided an address and left. (3a, 39a). Darden returned shortly thereafter, looked very nervously at the bag, then walked away. (Tr. 14).

The narcotics detection dog arrived about 20 minutes after the bag was detained. (39a). The dog performed an exterior inspection of the bag and, by scratching aggressively, indicated the presence of a controlled dangerous substance inside the bag. (39a). After that positive reaction, Mallory took the bag to a Prince George's County Police station, where two other drug-detecting dogs indicated the presence of cocaine. (39a). With the assistance of another narcotics investigator, Mallory prepared an application for a warrant to search the bag. (Tr. 27). The application detailed all of the facts surrounding the encounter with Darden and the seizure and detention of the bag. (52a-58a). The completed application was approved over the telephone by an Assistant State's Attorney after it was read to her. (4a). Mallory thereafter went to a judge's residence, affirmed the facts under oath, and signed the application. (4a). The judge signed the warrant and gave it to Mallory. (40a).

Mallory returned to the police station and searched the bag, recovering 223.9 grams of suspected cocaine. (4a, 40a). The substance field-tested positive for cocaine. (4a). Mallory then prepared an arrest warrant for Darden, charging him with possession with intent to distribute, which was approved by a commissioner. (4a, 40a). The next day, Mallory and other officers arrested Darden and, during the search incident to the arrest, recovered two pistols and a triple beam

scale. (40a). Darden was advised of his *Miranda* rights and thereafter voluntarily gave an inculpatory statement at the police station. (40a).

In a written opinion and order filed February 19, 1992, the circuit court granted Darden's motion to suppress, reasoning that the police did not possess articulable suspicion of criminal activity when the officers seized the bag. (47a). It further reasoned that all of the evidence—including the cocaine found in the sports bag, the scale and weapons recovered when Darden was arrested, and Darden's statement after his arrest—was the direct result of the bag's seizure. (47a-49a). Applying the fruit of the poisonous tree doctrine, the court suppressed all of the evidence. (50a).

The State filed a notice of appeal to the Court of Special Appeals of Maryland. That court, in an order filed August 12, 1992, and followed by a published opinion filed September 9, 1992, affirmed the motion court's ruling. (1a). The Maryland intermediate appellate court held that the sports bag's seizure was not supported by articulable suspicion and that the issuance of the search and arrest warrants and the giving of *Miranda* warnings did not dissipate the taint of the illegal seizure of the bag. (7a-21a, 30a-35a). The court also found that the good faith doctrine was inapplicable because the bag's illegal seizure preceded the issuance of the search warrant. (21a-30a).

The State filed a petition for a writ of certiorari to the Court of Appeals of Maryland. In an order dated November 10, 1992, that court denied the State's petition. (36a).

REASONS FOR GRANTING THE WRIT

THE FEDERAL COURTS OF APPEAL ARE IN DIRECT CONFLICT ON THE FREQUENTLY RECURRING ISSUE OF WHETHER THE GOOD FAITH DOCTRINE OF *UNITED STATES v. LEON* APPLIES TO THE EXECUTION OF SEARCH WARRANTS BASED ON UNLAWFUL DETENTIONS OF A TRAVELER'S LUGGAGE.

When the police in this case seized and detained Ricky Darden's sports bag, they believed that they were adhering to the letter of the Fourth Amendment. Indeed, at the time the police detained Darden's bag for 20 minutes to permit the dog sniff, they knew, inter alia, that he had come from a source city; had exhibited extreme nervousness; had falsely denied having a ticket from that source city; and had misspelled his name. Their belief that these facts constituted articulable suspicion was reinforced when, on disclosure of all the facts surrounding the encounter in their application for a warrant to search the bag, a neutral magistrate gave his imprimatur by issuing the requested warrant. Even the Maryland Court of Special Appeals acknowledged that the police "attempted to conform" their actions to "accepted practices in the interdiction of drug couriers." (21a). Nevertheless, because that court ruled that the police did not, in fact, have the requisite articulable suspicion to seize the bag, the court upheld suppression of the evidence obtained as the result of the warrant's execution as "tainted fruit" of the initial illegality. (35a).

The State does not here challenge the Maryland court's conclusion that the seizure of Darden's bag was unlawful, but does take issue with the court's

further conclusion that the illegal seizure dictated suppression of the fruits of the warrant's execution. The only question before this Court is whether the issuance of a search warrant following an assumptively unlawful seizure mandates suppression of the evidence subsequently recovered.

The Maryland court's conclusion that suppression is automatically required in such a circumstance is inconsistent with the fundamental purpose of the exclusionary rule. The rule is a remedial device designed to deter police misconduct. *United States v. Leon*, 468 U.S. 897, 906-08 (1984). But, because the exclusion of probative evidence "exacts a costly toll upon the ability of courts to ascertain the truth in a criminal case," *United States v. Payner*, 447 U.S. 727, 734 (1980), this Court has restricted application of the exclusionary rule " 'to those areas where its remedial objectives are most efficaciously served.' " *Id.*, *quoting United States v. Calandra*, 414 U.S. 338, 348 (1974). Where, as here, police execute a warrant that has issued in reliance upon full disclosure of facts surrounding a seizure, even though a reviewing court ultimately concludes that the seizure was not justified, there is no police "misconduct" to deter. Accordingly, the purposes of the exclusionary rule plainly are not furthered by suppression of subsequently obtained evidence.

Cases in the federal courts of appeal are in direct conflict on this issue, based on remarkably similar facts. Some courts have held that the good faith doctrine of *United States v. Leon* applies to the execution of a search warrant issued upon information obtained as a result of an illegal seizure. These courts explain that reliance on the warrant is reasonable because

the police have done everything they could by presenting the facts to a magistrate for approval. *See United States v. Kiser*, 948 F.2d 418, 421-22 (8th Cir. 1991) (good faith doctrine made suppression inappropriate where illegal seizure of traveler's luggage was followed by search pursuant to warrant), *cert. denied*, 112 S. Ct. 1666 (1992); *United States v. White*, 890 F.2d 1413, 1419 (8th Cir. 1989) (same), *cert. denied*, 497 U.S. 1010 (1990). *See also United States v. Carmona*, 858 F.2d 66, 68 (2d Cir. 1988) (good faith doctrine made suppression inappropriate where evidence was recovered pursuant to search warrant based upon information obtained as result of illegal search); *United States v. Thomas*, 757 F.2d 1359, 1367-68 (2d Cir.) (good faith doctrine made suppression inappropriate where dog sniff outside apartment door constituted illegal search forming necessary element of probable cause for search warrant), *cert. denied*, 474 U.S. 819 (1985); *United States v. Thornton*, 746 F.2d 39, 48-49 (D.C. Cir. 1984) (assuming that seizure of evidence from trash can was illegal and served as basis for probable cause to issue search warrant, good faith reliance on warrant made suppression inappropriate). *Cf.* Bruce A. Green, *The Good-Faith Exception to the Fruit of the Poisonous Tree Doctrine*, 26 Crim. L. Bull. 509, 533 (1990) ("If officers reasonably believe that a warrantless search was lawful and then obtain an explicit judicial determination to that effect after fully disclosing to the magistrate all the relevant facts and law, then any evidence later obtained in reliance on the magistrate's ruling should be admissible.").

Other courts, as did the Maryland court here, have eschewed the *Leon* good faith doctrine in these cir-

cumstances and have adhered to the fruit of the poisonous tree doctrine of *Wong Sun v. United States*, 371 U.S. 471 (1963). These courts reason that the issuance of the warrant neither insulates the prior illegal activity from review nor vitiates its effect. *See United States v. Scales*, 903 F.2d 765, 768 (10th Cir. 1990) (good faith doctrine inapplicable to illegal seizure of traveler's luggage followed by search of luggage pursuant to warrant); *United States v. Solomon*, 728 F. Supp. 1544, 1549-50 (S.D. Fla. 1990) (no good faith reliance on search warrant issued after illegal detention because, inter alia, warrant application omitted circumstances surrounding detention). *See also United States v. Vasey*, 834 F.2d 782, 789-90 (9th Cir. 1987) (good faith doctrine inapplicable when search pursuant to warrant followed illegal warrantless search, although first search was detailed in affidavit in support of search warrant); 1 Wayne R. LaFave, *Search and Seizure* § 1.3(f), at 65-66 (2d ed. 1987) (recognizing split of authority and stating that there is "good reason" to doubt that there can be good faith reliance on warrant based on prior illegal activity).

Still other courts do not address the good faith question at all. After determining that there has been an illegal seizure, these courts, with little or no analysis, mechanically suppress the evidence recovered pursuant to the search warrant. *See United States v. Hall*, 978 F.2d 616, 621-22 (10th Cir. 1992) (following illegal seizure of train passenger's luggage, fruits of search pursuant to warrant suppressed); *People v. Breeding*, 579 N.E.2d 1128, 1130-36 (Ill. App. 1991) (when bag of train traveler seized, temporarily detained for dog sniff, and search warrant issued based

on positive alert, drugs found in bag suppressed because no articulable suspicion supported seizure of bag), *cert. denied*, 587 N.E.2d 1018 (Ill.), *cert. denied*, 112 S. Ct. 3034 (1992); *United States v. Millan*, 912 F.2d 1014, 1018 (8th Cir. 1990) (following illegal detention of jacket and garment bag, fruits of search pursuant to warrant suppressed); *cf. id.* at 1018, 1022-23 (Magill, J., dissenting) (complaining about majority's failure to address good faith). *See also United States v. Dicesare*, 765 F.2d 890, 898-99 (although recognizing that seizures and searches implicate different interests, evidence suppressed because dog sniff that provided basis of probable cause for warrant to search apartment occurred during unlawful seizure of apartment), *modified on other grounds*, 777 F.2d 543 (9th Cir. 1985).

This case stands at the intersection of two basic tenets of Fourth Amendment jurisprudence, the fruit of the poisonous tree doctrine and the good faith doctrine, in the context of "the increasingly common practice of detaining luggage carried by a suspected drug courier." 3 LaFave, *supra*, § 9.6(e), at 588. This Court has the opportunity, in deciding this case, to determine whether suppression is an appropriate sanction when a traveler's personal possessions are illegally seized but are only searched pursuant to a subsequently issued warrant. The deterrent purpose of the exclusionary rule is not served where, as here, the police take measured steps to insure compliance with the Fourth Amendment and fully disclose their activities to a magistrate, even though it is subsequently determined that their activities prior to securing the warrant did not comply with the reasonableness clause. A decision by this Court is nec-

essary to resolve the conflict over the applicability of the good faith doctrine to such cases and is therefore in the public interest.

CONCLUSION

For the foregoing reasons, the State of Maryland respectfully requests that this Court issue a writ of certiorari and reverse the judgment of the Court of Special Appeals of Maryland.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

GARY E. BAIR*
MARY ELLEN BARBERA
THOMAS K. CLANCY
Assistant Attorneys General

Counsel for Petitioner

**Counsel of Record*

February 5, 1993

APPENDIX

CONTENTS OF APPENDIX

Page

Appendix A

Reported decision of the Court of Special Appeals of Maryland dated September 9, 1992, *State of Maryland v. Ricky Darden,* 93 Md. App. 373, 612 A.2d 339 (1992) 1a

Appendix B

Reported Order of the Court of Appeals of Maryland, dated November 3, 1992, *State of Maryland v. Ricky Darden,* 328 Md. 447 (1992) 36a

Appendix C

Unreported ruling of the Circuit Court for Prince George's County, Maryland, dated February 4, 1992, *State of Maryland v. Ricky Darden,* Case No. CT. 91 1894X 37a

Appendix D

Search Warrant and Application for Search Warrant, both dated August 20, 1991 ..... 52a

APPENDIX A

Court of Special Appeals of Maryland.

Sept. 9, 1992.

No. 278

STATE of Maryland

v.

Ricky DARDEN.

Sept. Term, 1992.

Submitted before ALPERT, BLOOM and DAVIS, JJ.

DAVIS, Judge.

Ricky Darden, appellee, was indicted on September 9, 1991, on two counts of possession with intent to distribute a controlled dangerous substance, one count of possession of a controlled dangerous substance, and one count of transporting a handgun. On September 25, 1991, Darden filed a motion to suppress evidence, and a January 21, 1992 evidentiary hearing followed in the Circuit Court for Prince George's County. In a memorandum opinion filed on February 19, 1992, the trial court granted Darden's motion. The State now seeks our review, asserting that the trial court erroneously granted Darden's motion. We issued an order on August 12, 1992, affirming the order of the Circuit Court for Prince George's County. We now explain.

FACTUAL BACKGROUND

On August 20, 1991, at approximately 1:50 p.m., Ricky Darden, in the midst of approximately fifteen to twenty

people, disembarked from a train arriving at the New Carrollton Metro Station in Prince George's County from New York City. He caught the attention of Officers T.N. Mallory and Thomas J. Call as he proceeded past them on the platform and then down the escalator to the mezzanine level, at which time, according to Mallory at the suppression hearing, he followed Darden to the exit of the Amtrak subway station. There, Mallory approached Darden, identified himself as a Metro Transit Police Officer, and requested to speak with him. According to Mallory, Darden had made eye contact with him four times—three times looking over his left shoulder and once over his right shoulder. As Darden proceeded down the escalator, glancing at the Metro policemen, "he was very nervous and started to shake." He then looked over his left shoulder and was observed shaking.

Darden agreed to speak with Mallory, whereupon Mallory advised him that he and his partner were conducting drug interdiction "to stop the illegal flow of narcotics coming from New York City into the metropolitan area." Mallory observed that Darden "was sweating profusely at that time from his forehead and that he was shaking." It was his opinion that the perspiring was inconsistent with the temperature in the Metro station at the time. When asked for his train ticket, Darden replied that he didn't have one, at which time Mallory "advised him that he needed a ticket to ride the Amtrak train."

After producing his wallet from a pants pocket, Darden "start[ed] to fumble in his wallet for the ticket." The witness opined that Darden appeared to have problems locating his ticket, he was very nervous, his hands were shaking, and "he had trouble getting anything out of his wallet." Darden handed the ticket to Mallory and, after observing that Darden had boarded the train at Penn Station in New York City, the police officer returned the ticket to Darden, inquiring if he had purchased the ticket. Darden advised him that his mother had paid for the ticket.

When asked his name, the appellee identified himself as Ricky Darden and then, when requested, spelled his last name D-A-R-D-O-N. Darden then produced identification in the form of a unofficial laminated ID card on which the name indicated was Ricky Darden with the last name spelled D-A-R-D-E-N. The identification card was returned to the appellee, and he was next questioned about his destination, whereupon he stated he was going to 18408 London Lane in Bowie, Maryland. When questioned further, Darden indicated that he was not carrying any large amounts of money or drugs on him or in his bag. Mallory then asked Darden for permission to search his bag; according to Mallory, the appellee gave his consent.

As Mallory began to open up the center pouch of the gym bag, appellee went over to Officer Call and asked, "Did I [Mallory] have to look in the bag?" Upon being advised that Mallory could only search the bag if he had Darden's consent, appellee stated that he did not want the officers to look in the bag, at which point Mallory stopped. Before he was able to fasten the zipper, however, Darden "grabbed the handles of the bag and tried to walk off very quickly." Mallory grabbed the bag and told Darden that he was temporarily detaining the bag in order to call a narcotics detection dog to "do the exterior inspection of the bag." Darden was free to go or stay, as he chose, until the dog arrived and inspected the bag. Appellee was advised that it would be somewhere between ten to twenty minutes before the dog arrived and, if the dog did not indicate the presence of narcotics, the bag would be returned if appellee would provide the officers with an address and a phone number where he could be located. The address Darden gave them was 18408 London Lane.

According to Mallory, the narcotics detection dog arrived approximately twenty minutes later.[1] The drug-sniff-

[1] The record of the proceedings indicates that the initial confrontation between the appellee and the police occurred at approximately 1:50

ing dog, Wolf, conducted an exterior inspection and indicated the presence of a controlled dangerous substance by scratching the bag vigorously. Following the dog's reaction, the officers took the bag to a Prince George's County police station and prepared an application for a warrant to search the bag. Once the application was completed, Mallory called Assistant State's Attorney Kathy Evans, who approved the warrant application after it had been read to her over the telephone. Mallory then learned that Judge Devlin was on duty that evening and went to his home, where Mallory attested, under oath, to the facts in the affidavit. Mallory affixed his signature, and the judge signed the warrant, returning it to Mallory.

The officer returned to the police station with the warrant and searched the bag, discovering 223.9 grams of suspected cocaine. The substance field-tested positive for cocaine, and Mallory prepared an arrest warrant for Darden. Mallory then went to the commissioner's office and had Darden charged with possession with intent to distribute.

The next day Mallory and other officers attempted to arrest Darden at the address he had given and discovered that there was no house at the address given. Through a BMW automobile registered in his name, police tracked Darden to 14808 London Lane, were they observed Darden leaving the residence at approximately 11:00 a.m., carrying a green paper bag and a plastic bag. Darden entered a waiting taxi cab and departed. The officers, who were in unmarked vehicles, pursued and arrested Darden when the cab stopped at a Camp Springs apartment complex. Police recovered a loaded 9mm handgun and a triple-beam scale from the green paper bag. A loaded .25 caliber gun was recovered from the other bag.

---

p.m., and the narcotics detection dog arrived at approximately 2:20 p.m., or thirty minutes after Darden was first accosted.

Officer Tommy Call was the final witness to testify concerning the incident, and he related facts identical to those given by Officer Mallory.

LEGAL ANALYSIS

The Fourth Amendment to the United States Constitution provides:

> [*Security from Unwarrantable Search and Seizure*] The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The constitutional right against unreasonable searches and seizures is made applicable to the States through the Fourteenth Amendment and is specifically applicable to the State prosecutions by the Supreme Court's decision in *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

The appellee, citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889 (1968), acknowledges that it is permissible for an investigating officer to "briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulated facts that criminal activity 'may be afoot' even if the officer lacks probable cause." Appellee contends that "no reasonable articulable suspicion supported the seizure of Darden's bag" and that the court was therefore correct in its finding that the State's remaining evidence must be suppressed because it "was the direct result of the unlawful seizure." The State replies that the trial court's ruling is erroneous because there was articulable suspicion of criminal activity to justify the seizure of the bag. Assuming, *arguendo*, the

bag was illegally seized, the State alternatively contends that the subsequent actions of the police officers were based upon the good faith exception that they were acting pursuant to a valid search warrant.

The lower court, in its memorandum opinion, determined that the initial confrontation in questioning of the appellee was constitutionally permissible because "it would appear to a reasonable person in [appellee's] position, that he had a right, at any time, to terminate the questioning and leave," citing *U.S. v. Mendenhall*, 446 U.S. 544, 546, 100 S.Ct. 1870, 1873, 64 L.Ed.2d 497 (1980). The court further observed that appellee's constitutional rights were not violated when the initial search commenced because it was pursuant to the consent obtained. Concerning the initial seizure of the appellee's sports bag, the lower court considered six factors relevant to the inquiry:

> To summarize, at the time Officer Mallory detained the bag, the Officer knew the following: (1) defendant had been a passenger on a train which had come from a "source city"; (2) from the time defendant got off the train until the time the bag was seized, defendant was agitated and nervous; (3) that defendant, before producing identification, had misspelled his surname; (4) that defendant had falsely said he did not have a ticket; (5) that defendant had withdrawn his consent to the search immediately upon being made aware of his right to refuse consent; and (6) that although he had searched the bag for a minute he had not found anything incriminating in it.

The court's memorandum opinion continues by adverting to the principle that, subject only to a few exceptions, the seizure of a person's property is *per se* unreasonable under the Fourth Amendment when such seizure is not conducted pursuant to the authority of a warrant supported by probable cause. *Riddick v. State*, 319 Md. 180, 571 A.2d 1239 (1990).

Finding that there was not a reasonable articulable suspicion to warrant a narcotics-related detention, the lower court granted appellee's motion to suppress.

STANDARD OF REVIEW

We have set forth the factual findings made by the judge on the motion to suppress because we are mandated, when the facts are in dispute, to accept them as found by the trial judge unless he is clearly erroneous in his judgment on the evidence before him. *Riddick*, 319 Md. at 183, 571 A.2d 1239. Our determination as to whether he is clearly erroneous requires us to give due regard to the opportunity of the trial court to judge the credibility of the witnesses. Md.Rule 8-131(c).

Notwithstanding the requirement that we defer to the findings of fact of the trial judge on the motion to suppress, when the question is whether a constitutional right has been violated, we must make our own independent constitutional appraisal by reviewing the law and applying it to the peculiar facts of the particular case. *Riddick*, 319 Md. at 183, 571 A.2d 1239; *State v. Gee*, 298 Md. 565, 571, 471 A.2d 712 (1984).

REASONABLE ARTICULABLE SUSPICION

As noted above, the Fourth Amendment prohibits the search and/or seizure of a person or the effects of a person "but upon probable cause." Succinctly put, probable cause is defined as "a fair probability that contraband or evidence of a crime will be found in a particular place." *Malcolm v. State*, 314 Md. 221, 550 A.2d 670 (1988), citing *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) (citations omitted). In *Terry v. Ohio, supra*, the Supreme Court announced a standard less stringent than probable cause under which a police officer may conduct a field interview and a limited search of a suspect. Under *Terry*, a reasonable articulable suspicion is required before

an officer is authorized to detain a citizen to confirm or dispel his suspicion of the citizen's involvement in criminal activity. *Id.* In *Graham v. State*, 325 Md. 398, 406, 601 A.2d 131 (1992), quoting *Florida v. Bostick*, 501 U.S. ___, 111 S.Ct. 2382, 2386, 115 L.Ed.2d 389 (1991), the Court of Appeals noted that

> "law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if he is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions." [Citations omitted.]

In the case before us, both sides agree, and we concur, that the Fourth Amendment was not implicated until such time as Officer Mallory exercised dominion and control over Darden's bag and refused to allow him to leave with it.[2] Until that moment, the encounter between Darden and the officers, as evident from the testimony given, was purely consensual. The principal focus of this appeal is whether the police officers had a reasonable articulable suspicion that Darden's bag contained contraband when they seized it. We hold that they did not satisfy the requisites of a *Terry* stop, and we now explain.

The Supreme Court discussed reasonable articulable suspicion in *Reid v. Georgia*, 448 U.S. 438, 100 S.Ct. 2752, 65 L.Ed.2d 890 (1980), a case involving the so-called "drug-courier profile." The petitioner in *Reid* flew into Atlanta and, as he walked through the airport, glanced back occasionally at a second man. The men, who both carried

---

[2] "Only when the officer, *by means of physical force or show of authority, has in some way restrained the liberty of a citizen* may we conclude that a 'seizure' has occurred." *Watkins v. State*, 288 Md. 597, 610, 420 A.2d 270 (1980) (emphasis in original), quoting *Terry*, 392 U.S. at 19 n. 16, 88 S.Ct. at 1879 n. 16.

shoulder bags, were stopped by police and asked for identification. Though they consented to a search of their persons and shoulder bags, the petitioner tried to run away but was apprehended. The Georgia Court of Appeals held that the evidence against the petitioner should not be suppressed, finding that the investigatory stop was valid because he fit the "drug-courier profile."

The Supreme Court reversed the state court and held that the petitioner's actions did not warrant a *Terry*-type investigatory stop because the police officers lacked a reasonable articulable suspicion of criminal activity. The Court said the circumstances present in *Reid* would "describe a very large category of presumably innocent travelers, who would be subject to virtually random seizures." *Reid*, 448 U.S. at 441, 100 S.Ct. at 2754. The Court discounted the following circumstances: that Reid flew in from a principal source city; that he arrived early in the morning, "when law enforcement activity is diminished"; and that he had no luggage other than a shoulder bag. *Id.* The Court also was not swayed by the fact that Reid and his traveling companion appeared nervous during conversations with drug agents and were visiting Ft. Lauderdale only for one day. The Court concluded that "the agent could not, as a matter of law, have reasonably suspected the petitioner of criminal activity on the basis of these observed circumstances." *Id.*

Although the instant case was not decided on the basis of the drug courier profile, *Reid* is instructive in its teaching that "more [is] required than the presence of drug courier profile characteristics." *United States v. Haye*, 825 F.2d 32, 34 (4th Cir.1987). Other factors also must be present sufficient to arouse a "particularized suspicion" that the defendant is engaging in criminal activity.

Invocation of a *Terry* stop for brief periods when there is a reasonable, articulable suspicion is an appropriate investigatory tool, as explicated in *United States v. White*,

890 F.2d 1413 (8th Cir.1989). In *White*, the defendant, who was arrested in an airport, was convicted of possession of cocaine with intent to distribute. Police made an investigatory stop because White appeared nervous; he was clutching his carry-on bag under his arm as he deplaned; he was traveling from a source city; he had arrived early in the morning; he had purchased a one-way ticket with cash; and the flight he was on had previously yielded arrests of narcotics traffickers. When police asked for permission to search his luggage, the defendant declined to give his consent. The defendant asked to leave, and the officers responded that he could leave but that he could not take his luggage with him. Police brought a drug-sniffing dog to the scene *about one minute* after the defendant was told he could not take his luggage. The dog "alerted" to the carry-on bag, and police obtained a warrant to search it and found a package containing cocaine. The Court wrote that

> even if White was at all times free to leave, officers must have a *reasonable, articulable suspicion* to justify detention of a person's luggage, just as they must have to detain the person himself. . . . The officers confronting White, therefore, needed sufficient grounds to form a *reasonable, articulable suspicion* of criminal activity in order to detain White's bags.

Id. at 1416 (emphasis added).

The Court held that the officers lacked sufficient justification to detain either White or his luggage. It said:

> Without having any advanced information that suggested "criminal activity may be afoot," *Terry, supra*, 392 U.S. at 30, 88 S.Ct. at 1884, or that pointed to someone matching White's description, the officers relied on the sort of "fragmentary facts" that the Supreme Court rejected as a valid basis for the investigative stop in *Reid* [*v. Georgia*, 448 U.S. 438, 442 n. 1, 100 S.Ct. 2752, 2755 n. 1, 65 L.Ed.2d 890 (1980)].

Id. at 1419.

Numerous federal cases have considered when sufficient factors exist to satisfy the reasonable articulable suspicion standard. A police officer's hunch or intuitive belief is not sufficient to establish a reasonable articulable suspicion; there must be some "particularized suspicion about the individual." *United States v. Millan*, 912 F.2d 1014, 1017 (8th Cir.1990). The courts, in deciding whether a reasonable articulable suspicion exists, do not focus on singular isolated facts but "upon the totality of the circumstances." *United States v. Grant*, 920 F.2d 376, 385 (6th Cir.1990), citing *United States v. Sokolow*, 490 U.S. 1, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). *See United States v. Whitehead*, 849 F.2d 849, 858 (4th Cir.1988) ("[W]e cannot engage in piecemeal refutation of each individual factor as being consistent with innocence. It is the entire mosaic that counts, not single tiles.")

In the instant case, the officers said their suspicions were aroused because the appellee, who had arrived aboard a train from New York, a source city for narcotics, made repeated eye contact with them. When police stopped the appellee, they said he appeared nervous and began "shaking" and "sweating profusely." The appellee told police he did not have a train ticket but then produced one when reminded by the officers that he needed a ticket to ride the train, and, when asked his name, misspelled his last name as D-A-R-D-O-N, when in fact it was Darden. When we view these circumstances in their totality, we find "too slender a reed," *Reid*, 448 U.S. at 441, 100 S.Ct. at 2754, to support a reasonable articulable suspicion of criminal activity.

The State cites appellee's nervousness as a principal factor to buttress its argument that the officers reasonably suspected him of criminal wrongdoing. Court decisions have made it clear, however, that a person passing through an airport, train station or bus depot cannot be stopped solely because he appears nervous, harried, or anxious. "[C]ertain

behavior characteristics [are] inherently *unsuspicious* and, thus, entitled to no weight in the calculation." *United States v. Saperstein*, 723 F.2d 1221, 1228 (6th Cir.1983) (emphasis added). The *Saperstein* Court cited both nervousness and travel to and from a source city as examples of such behavior. "Nervousness is entirely consistent with innocent behavior, especially at an airport where a traveller may be anticipating a long-awaited rendezvous with friends or family." *U.S. v. Andrews*, 600 F.2d 563, 566 (6th Cir.1979).

In *Whitehead, supra*, nervousness was only one of several factors the Court considered in deciding that the police reasonably suspected the defendant was engaged in the transport of illegal drugs. Police said the defendant appeared startled, nervous, and began sweating profusely when approached by police. There also were other circumstances to consider in deciding whether police reasonably suspected the defendant of criminal activities, including the fact that Whitehead travelled from Miami, a major source city; he had stayed at a Miami hotel known as a meeting place for drug traffickers; he had arrived at a train station just minutes before his train was to depart and then repeatedly looked around the entrance before going inside the station; and when asked his name, he had responded "W. Tucker" rather than supplying a full name. *Whitehead*, 849 F.2d at 858.

In *Grant, supra*, the Court rejected the prosecution's contention that agents reasonably suspected the defendant because he was nervous, had shaking hands, and misstated the destination of his flight as Kennedy Airport rather than LaGuardia Airport. *Grant*, 920 F.2d at 386. *United States v. Haye*, 825 F.2d at 34, involved a man walking through an airport who appeared nervous, while his travelling companion followed some 20 to 25 feet behind him. Because they exhibited some of characteristics of the drug courier profile, the officers approached the two as they left the terminal building; both men bolted. *Id.* at 33. The Fourth

Circuit Court of Appeals held that police did not have reasonable suspicion sufficient to make an investigatory stop at the time of the initial encounter. The Court concluded, however, that "all of the circumstances, including the flight, furnished reasonable suspicion for a brief, involuntary, investigative stop." *Id.* at 34.

> Innocent passengers fly on airplanes from such cities as Miami that are known sources of drug supplies. Some of them may take circuitous routes through airline terminals and appear nervous or furtive, but they do not break into precipitous flight upon being informed by a man in civilian clothing that he is a policeman. Against the background of drug courier characteristics they had shown, their flight from the presence of two men upon their announcement that they were policemen gave the police reasonable, articulable suspicion, based upon objective facts, quite sufficient to warrant a *Terry* stop.

Id.

In the case *sub judice*, there was neither evidence that Darden fit the drug courier profile nor was the issue of the existence, *vel non*, of reasonable articulable suspicion based on such a profile. The nervousness exhibited by Darden and the fact that he was en route from a source city and that he misspelled his name did not provide sufficient grounds for the police officers' investigatory stop. We hold, therefore, that the police did not have a reasonable articulable suspicion that the appellant was engaged in any criminal wrongdoing.

Assuming, *arguendo*, that the officers had reasonable suspicion sufficient for an investigatory stop, the officers' constitutional intrusion in the instant case would have exceeded that permitted by a *Terry* stop, and thus the officers were required to have probable cause to justify their prolonged seizure of the bag.

Once they seized the bag, the officers temporarily retained the bag to await the arrival of the drug-detecting canine. When the dog indicated that narcotics were in the bag, the officers removed the bag to the police station to obtain a warrant to search the bag and, once there, performed a second canine inspection with the same results. The officers then obtained the warrant. After obtaining the warrant, they searched the bag and found the illicit drugs.

In contrast to what occurred in *United States v. White, supra*, where the detention was for one minute, the drug-sniffing dog did not arrive for twenty minutes in this case. In circumstances where the information possessed was more than present here and the time of detention less, the *White* Court found the requisite reasonable articulable suspicion lacking. Probable cause was also lacking to seize the bag, as we explain *infra*.

In another factually similar case, the Supreme Court considered the detention of a defendant's luggage in *United States v. Place*, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983). The defendant, in *Place*, boarded a New York-bound plane in Miami where agents had asked him if they could search his luggage. Even though the defendant consented, the police did not conduct a search because his flight was about to depart. The Miami officers alerted agents in New York who stopped him when he deplaned. When Place declined to let them search his luggage, the agents informed him that they were taking the luggage and would try to get a search warrant, which they did ultimately. About ninety minutes elapsed between the seizure of Place's luggage and the arrival of a drug-sniffing dog. The dog reacted positively to one of the defendant's bags. Because it was a late Friday afternoon, the agents kept the defendant's luggage until Monday when they secured a search warrant and discovered 1,125 grams of cocaine.

The Supreme Court determined that the agents made a "seizure" under the Fourth Amendment "when, following his refusal to consent to a search, the agent told Place that he was going to take the luggage to a federal judge to secure issuance of a warrant." *Id.* at 707, 103 S.Ct. at 2645. The Court, relying largely upon the length of time the agents detained the defendant's luggage, concluded that the agents had exceeded "the permissible limits of a *Terry*-type investigative stop." *Id.* at 709, 103 S.Ct. at 2645. The Supreme Court wrote:

> The precise type of detention we confront here is seizure of personal luggage from the immediate possession of the suspect for the purpose of arranging exposure to a narcotics detection dog. Particularly in the case of detention of luggage within the traveler's immediate possession, the police conduct intrudes on both the suspect's possessory interest in his luggage as well as his liberty interest in proceeding with his itinerary. The person whose luggage is detained is technically still free to continue his travels or carry out other personal activities pending release of the luggage. Moreover, he is not subjected to the coercive atmosphere of a custodial confinement or to the public indignity of being personally detained. *Nevertheless, such a seizure can effectively restrain the person since he is subjected to the possible disruption of his travel plans in order to remain with his luggage or to arrange for its return.*

462 U.S. at 708, 103 S.Ct. at 2645 (emphasis added). The Court continued:

> The length of the detention of respondent's luggage alone precludes the conclusion that the seizure was reasonable in the absence of *probable cause*. Although we have recognized the reasonableness of seizures longer than the momentary ones involved in *Terry* . . . , the brevity of the invasion of the individual's

> Fourth Amendment interests is an important factor in determining whether the seizure is so minimally intrusive as to be justifiable on reasonable suspicion. . . . Thus, although we decline to adopt any outside time limitation for a permissible *Terry* stop, we have never approved a seizure of the person for the prolonged 90-minute period involved here and cannot do so on the facts presented by this case.
>
> Although the 90-minute detention of respondent's luggage is sufficient to render the seizure unreasonable, the violation was exacerbated by the failure of the agents to accurately inform respondent of the place to which they were transporting his luggage, of the length of time he might be dispossessed, and of what arrangements would be made for return of the luggage if the investigation dispelled the suspicion. In short, we hold that the detention of respondent's luggage in this case went beyond the narrow authority possessed by police *to detain briefly* luggage reasonably suspected to contain narcotics.

Id. at 709-10, 103 S.Ct. at 2645-46 (emphasis added) (citations omitted) (footnote omitted).

Under the above rationale and the facts of this case, the seizure of Darden's bag went beyond the pale of a *Terry* stop and into the realm of a full-blown seizure.

> [T]he constraint on liberty imposed by a *Terry* stop is relatively minimal. It is limited in space in the sense that it does not involve removing the suspect from the place where he is initially stopped to some more remote location. It is limited in time in that its duration must be brief.

Derricott v. State, 84 Md.App. 192, 210, 578 A.2d 791 (1990).

Notwithstanding that the cited decisions emphasize that the detention must be brief, we do not decide (as did the

Supreme Court regarding the ninety minute delay in *Place*) that a thirty minute delay is *per se* unreasonable. Our decision turns rather on whether there were indicia that appellee's bag was reasonably suspected of containing drugs, thereby rendering a brief detention reasonable.

The Fourth Amendment requires a valid warrant or a warrant exception to justify such a seizure. The officers in this case did not possess a warrant for the seizure of the bag. We have consistently held that "[w]arrantless arrests, searches and seizures are presumptively invalid and the burden is cast upon the State to rebut that presumption and establish their validity." *Anderson v. State*, 78 Md.App. 471, 484, 553 A.2d 1296 (1989), citing *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971).

The State argues that, under our decision in *Derricott*, *supra*, the officers were authorized to detain the bag temporarily to await the arrival of a narcotics detection dog. The recent reversal of our decision, in *Derricott*, by the Court of Appeals severely undercuts the State's argument. As we have observed, *supra*, p. 383, the case *sub judice* was not decided on the basis of the drug courier profile although much of the analysis parallels the approach taken in such cases and many of the cases cited considered the use of profiles. Our decision, in *Derricott*, relied, in part, on the use of the drug courier profile. The Court of Appeals, in rejecting the use of such profiles absent data supporting their validity, said

> In this case, the state has not disclosed any underlying statistics or data to explain why the combination of circumstances at issue here produces reasonable suspicion,
>
> No attempt was made to explain how this profile was formulated, or even whether empirical evidence which might lead to its development exists,

* * * *

> Without more the attributes the state claims were suspicious about Derricott's appearance simply are not enough to establish the requisite level of reasonable suspicion that Derricott was engaged in criminal activity.

Derricott v. State, 327 Md. 582, 591, 593, 611 A.2d 592 (1992.) Appellant's reliance on our decision in *Derricott* is flawed because reasonable suspicion was based on the discovery of the glassine bag. The decision of the Court of Appeals however provides even greater support for appellee's position.

In *Derricott*, the appellant was pulled over for a routine traffic violation. Believing the driver to fit the current "drug courier profile," before giving Derricott the traffic citation, the officer called for additional "back-up" and a narcotics detection dog. Upon returning to Derricott's car, the officer asked him to step out of the vehicle, at which time the officer leaned into the vehicle and saw a glassine bag in a console between the two front seats containing what he believed to be cocaine. The officer seized the bag, and the substance was later found to be cocaine.

Notwithstanding that the Court of Appeals has viewed drug courier profiles with disfavor where no statistical basis is set forth, the decision turned on the discovery of the glassine bag containing suspected narcotics, which fact renders the instant case distinguishable.

More to the point, however, the Court of Appeals, echoing the sentiments of the Supreme Court, in *Reid, supra* decried targeting descriptions and actions which fit a large category of innocent travelers and determined that one could not conclude that Darone Antonio Derricott was trafficking in drugs and was armed and dangerous simply because he was (1) a young, black male, (2) carrying a

beeper, (3) wearing expensive jewelry and (4) driving an expensive sports car. *Derricott*, at 590, 611 A.2d 592.

The Court of Appeals observed, as had the *Reid* Court, that

> Those of his attributes which match the drug courier profile are sufficiently common that allowing a search and seizure, however brief, on this basis alone would subject too many innocent travelers to the invasion of privacy that such police action necessarily entails.

Derricott v. State, supra, at 592, 611 A.2d 592.

Despite the fact that in the case *sub judice* the lower court did not determine the reasonableness of the detention based on the drug courier profile, it is patently clear that Darden was a young, black male, proceeding from what Officers Mallory and Call considered a source city. While observations that a suspect is nervous and sweating are subjective and failure to produce one's train ticket and misspelling one's last name are subject to evaluation in the overall reasonable suspicion equation, the cataloguing of these factors serves the same purpose as compiling the more objective information which comprise the composite from which to predict that a citizen (in this case a traveller) is engaged in the illegal transportation of illicit drugs.

Bearing in mind the overriding privacy concerns and the need to avoid subjecting large numbers of innocent travellers to the inconvenience and humiliation of drug interdictions, the common thread running throughout decisions involving detention of travellers or their luggage in public places is that, before a brief wait for the arrival of a drug-sniffing dog [can be] a reasonable incident of a narcotics related detention, the information relied upon ordinarily falls into one of two broad categories. The primary kinds of circumstances which will provide the basis for reasonable articulable suspicion are discovery of direct

evidence of the existence of the contraband under circumstances constitutionally permitted (*i.e.*, plain view) prior to a search or seizure or activities particularly associated with practices incidental to drug operations and operatives but not considered to be normal conduct of the average citizen. In the latter category, one would not expect an innocent traveller to break into precipitous flight when approached by someone who identifies himself as a police officer. *See United States v. Haye, supra.*

The Court of Appeals contrasted the facts, in *Derricott*, with those extant in *United States v. Sokolow*, 490 U.S. 1, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989) (a case in which the Supreme Court found reasonable suspicion based on a match to a drug courier profile) where, in addition to travelling to or from a source city and appearing nervous (factors upon which the State relies in this case), the suspect had paid $2,100 for two airplane tickets from a roll of $20 bills; he travelled under a false name; the name he travelled under did not match his telephone listing; he stayed in Miami for only 48 hours although his round trip flight took 20 hours; and he checked no luggage, *Derricott*, 327 Md. at 593, 611 A.2d 592. Targeting the type of conduct described in *Sokolow* would not likely "subject too many innocent travellers to the invasion of privacy that such police action entails." *Derricott*, at 592, 611 A.2d 592. Subjecting travellers to drug interdiction for the type of conduct exhibited by Darden would result in too many innocent citizens being caught in the net intended to ensnare drug dealers.

In the present case, the officers had nothing other than Darden's failure to produce his train ticket, misspelling of his last name, his nervousness and sweating, and the fact that he was aboard a train from a source city upon which to base their seizure (*viz*, narcotics-related detention) of the bag, prior to the arrival and indication of the drug-sniffing dog. Since none of these factors point to a narcotics detention and since those criteria, taken separately

or as a whole, do not amount to probable cause sufficient to warrant the seizure, we hold that seizure of Darden's bag lacked probable cause and was illegal.[3]

GOOD FAITH EXCEPTION

The State next contends, assuming *arguendo* that the seizure of the bag was illegal, the evidence should not be suppressed because the bag was searched pursuant to a search warrant upon which the officers had a right to rely, the appellee was arrested pursuant to an arrest warrant, and a subsequent statement was made to the police by Darden after having been advised of his *Miranda* rights. Appellant acknowledges that the court's rulings "were premised on the belief that the initial seizure of the bag tainted all of the subsequent events." Appellant concludes that "the issuance of the warrants were intervening events

---

[3] Officer Mallory apparently attempted to conform his investigative procedures to accepted practices in the interdiction of drug couriers. That the officers did not arrest Darden at the Metro Station is indicative that they knew that they did not possess the requisite probable cause to effectuate his arrest. It is evident that the officers did not know to a "fair probability" that there was contraband or evidence of a crime inside Darden's bag. Had they possessed the requisite probable cause, they would not have needed to call the drug-sniffing dog to confirm or dispel their suspicions and could have searched the bag upon seizure. Additionally, had the officers had probable cause, they could properly have arrested Darden at the Metro Station and searched the bag incident to a lawful arrest. We have, in previous decisions, upheld searches made incident to arrest, even when the search occurred prior to the actual arrest under the rationale that the officers had probable cause to arrest at the time of the search, and therefore the acts are deemed to have "occurred instantly, one after the other." *Anderson v. State*, 78 Md.App. at 483, 553 A.2d 1296. *See also Brent v. State*, 311 Md. 626, 537 A.2d 227 (1988), and *Whitmire v. State*, 61 Md.App. 548, 487 A.2d 686 (1985). The contemporaneity as to search and arrest is not extant here although the appellant had the option of remaining with his bag. In fact, the officers told Darden that he was free to go while they waited with his bag for the arrival of the drug-sniffing dog.

that justified the officers' good faith reliance thereby making suppression inappropriate."

Appellant acknowledges that the exclusionary rule remains the principal remedy in the event of illegal police conduct (citing *McMillian v. State*, 85 Md.App. 367, 377, 584 A.2d 88 (1991), *vacated and remanded on other grounds*, 325 Md. 272, 600 A.2d 430 (1992)), but argues that "whether the exclusionary sanction is appropriately imposed in a particular case . . . is an 'issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule are violated by police conduct,' " (citing *United States v. Leon*, 468 U.S. 897, 906, 104 S.Ct. 3405, 3412, 82 L.Ed.2d 677 (1984)). Appellant then posits that we are constrained to decide whether "granting establishment of the primary illegality, the evidence . . . has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint," rather than to decide whether the evidence would not be discovered "but for" the law enforcement officer's illegal conduct, citing *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S.Ct. 407, 417, 9 L.Ed.2d 441 (1963). Appellant concludes that the evidence in this case is admissible despite prior illegal conduct by the seizing officer if "it [the evidence] has an 'attentuated link' to the underlying illegality. Citing the concurring opinion (Powell, J.) in *Brown v. Illinois*, 422 U.S. 590, 610, 95 S.Ct. 2254, 2265, 45 L.Ed.2d 416 (1975), appellant asserts "the notion of the dissipation of the taint attempts to make the point at which the detrimental consequences of illegal police action becomes so attenuated that the deterrent effect of the exclusionary rule no longer justified the cause."

Appellee replies that the Fourth Amendment exclusionary rule applies equally to statements and tangible evidence obtained following an illegal arrest or an otherwise illegal search and seizure, citing *Ryon v. State*, 29 Md.App.

62, 71, 349 A.2d 393 (1975). Appellee further contends that not "a scintilla of proof" exists that the taint was attenuated or that there is lacking a causal relationship between the illegal conduct that was exhibited by Officers Mallory and Call regarding the seizure and subsequent reliance by the officers on the search warrant. Darden notes that Officers Mallory and Call "were the officers relying on the search warrant," and that they were thus "fully informed of the events conveyed to the government in obtaining the warrant and, therefore, cannot argue an intervening act or event dissipated the illegal seizure, since they knew first-hand that none existed." For the sake of clarity, we shall discuss these theories separately.

The Search Warrant

Because the seizure of the bag preceded the indication of the presence of drugs by the narcotics detection dog, the seizure was illegal by reason of the lack of the requisite probable cause. The facts contained in the affidavit in support of the search and seizure warrant are simply a narration of the events surrounding the illegal seizure of the bag. In *United States v. Leon, supra,* the Supreme Court set forth an objective test for applying the good faith exception to the warrant requirement. The Court wrote:

> Accordingly, our good faith inquiry is confined to the objectively ascertainable question whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization.

Id. at 922 n. 23. *See also Connelly v. State,* 322 Md. 719, 730, 589 A.2d 958 (1991); *State v. Jacobs,* 87 Md.App. 640, 591 A.2d 252 (1991). In *Jacobs,* we concluded that

> [in *Leon*], the fact of issuance of a facially valid warrant, without more, is enough to justify the constitutional intrusion in the absence of dishonesty or recklessness or lack of a reasonable belief, on the part

> of the officer, in the existence of probable cause. *Leon*, 468 U.S. at 926, 104 S.Ct. at 3422.

We further observed, in *Jacobs* however, that

> a *Leon* analysis requires a threshold determination that the police officer acted [in seizing or searching] in reliance on the facially valid warrant. It is that he acted under color of authority and pursuant to a lawful command, *i.e.*, a judicially authorized warrant that imputes to his actions legal efficacy.
>
> Thus, although good faith reliance on a facially valid warrant is accorded great weight, our inquiry does not end there.

Id. 87 Md.App. at 653-54, 591 A.2d 252. Thus, for the good faith exception to apply, there must be a facially valid warrant and the officers, in fact, must have relied upon that warrant in executing the search.

In the case *sub judice*, we note, however, that the trial court made no factual determination of whether the officers reasonably relied in good faith upon a facially valid warrant in executing their seizure and subsequent search of Darden's bag. Because the court made no factual determination, we are confined to the language of the affidavit in reviewing the applicability of the good faith exception. *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). The Court of Appeals noted in *Connelly v. State*, 322 Md. at 735, 589 A.2d 958, that, "[a]s application of the good faith exception to the allegations of the affidavit presents an objectively ascertainable question, it is for the appellate court to decide whether the affidavit was sufficient to support the requisite belief that the warrant was valid." (Citations omitted). The pertinent portions of the affidavit that accompanied the application for the warrant to search the bag in this case read:

> Your affiant then asked Ricky Darden for consent to search the sports bag that he was carrying. That Ricky Darden stated that your affiant could search the bag. Your affiant then started to open the main pouch of the bag and began to search the said pouch. That Ricky Darden then grabbed the bag, stated that your affiant could not search the bag any more and started to walk away. At that point all searching of the said bag ceased and your affiant informed Ricky Darden that he intended to temporarily detain the bag until a narcotic detection dog could respond to the train station. Your affiant further advised Ricky Darden that he was free to leave or stay as he wished.
>
> . . . .
>
> Your affiant requested a narcotic detection dog to respond to the scene. At approximately 1420 hours, Officer Chandler #176 and dog "Wolf" responded. The "Wolf" performed an inspection of the said bag having a positive indication that controlled dangerous substances were concealed inside the said bag.

From the facts set forth above, the officers did not have probable cause as to the presence of narcotic until such time as the drug-sniffing dog arrived and made an affirmative indication. The seizure of the bag, however, was clearly effected before the officers had the requisite probable cause to seize the bag. As we noted in *Jacobs, supra*, in order for the good faith exception to the warrant rule to apply, it must first be demonstrated that the officers relied upon the judicially approved warrant in effectuating the seizure. Here, it is evident that there could be no reliance on a warrant that had neither been prepared or submitted for approval at the point in time that the bag was seized.

Considering the underlying rationale of the exclusionary rule, the Supreme Court said in *Leon*, 468 U.S. at 919, 104 S.Ct. at 3418, quoting *Michigan v. Tucker*, 417 U.S.

433, 447, 94 S.Ct. 2357, 2365, 41 L.Ed.2d 182 (1974), and *United States v. Peltier*, 422 U.S. 531, 539, 95 S.Ct. 2313, 2318, 45 L.Ed.2d 374 (1975):

> "The deterrent purpose of the exclusionary rule necessarily assumes that the police have engaged in willful, or at the very least negligent, conduct which has deprived the defendant of some right. By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused. Where the official action was pursued in complete good faith, however, the deterrence rationale loses much of its force."

In *Peltier*, 422 U.S. at 542, 95 S.Ct. at 2320, the Court further explicated:

> If the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge, that the search was unconstitutional under the Fourth Amendment.

Turning to the Supreme Court's holding in *Leon*, the Court specifically carved out four exceptions to the application to the good faith reliance principle:

> Deference to the magistrate, however, is not boundless. It is clear, first, that the deference accorded to a magistrate's finding of probable cause does not preclude inquiry into the knowing or reckless falsity of the affidavit on which that determination was based. Second, the courts must also insist that the magistrate purport to "perform his 'neutral and detached' function and not serve merely as a rubber stamp for the police." A magistrate failing to "manifest that neu-

> trality and detachment demanded of a judicial officer when presented with a warrant application" and who acts instead as "an adjunct law enforcement officer" cannot provide valid authorization for an otherwise unconstitutional search.
>
> Third, reviewing courts will not defer to a warrant based on a affidavit that does not "provide the magistrate with a substantial basis for determining the existence of probable cause." "Sufficient information must be presented to the magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others." Even if the warrant application was supported by more than a "bare bones" affidavit, a reviewing court may properly conclude that, notwithstanding the deference that magistrates deserve, the warrant was invalid because the magistrate's probable-cause determination reflected an improper analysis of the totality of the circumstances, or because the form of the warrant was improper in some respect.

Leon, 468 U.S. at 914-15, 104 S.Ct. at 3416-17 (footnotes omitted) (citations omitted).

In the case *sub judice*, Officers Mallory and Call clearly had knowledge or were properly charged with the knowledge that the search was unconstitutional because it was the action of Mallory in seizing the bag that constituted the illegality.[4]

---

[4] Appellant contends that "[t]he Court of Appeals' decision in *Connelly* recognizes that police can act in good faith reliance on the issuance of a warrant even when their actions serve as the basis for the warrant," citing 322 Md. at 735, 589 A.2d 958. The State misses the point, however, because the *Connelly* Court ultimately held that "the officers . . . could have reasonably believed that the averments of their affidavit related a present and continuing violation of the law . . . ." *Id.* In other words, the Court held that the belief of the officers was reasonable. While there can be no good faith reliance in this case in any event

The issuing magistrate's probable cause determination reflected an "improper analysis of the totality of the circumstances" because the affidavit states that Ricky Darden grabbed the bag, told Mallory he could not search the bag anymore, and started to walk away. After Darden was advised that the bag would be detained until a narcotics detection dog arrived, he departed. Significantly, the affidavit reveals that the delay was twenty to thirty minutes.

At the very least, the excerpt from the affidavit demonstrates that the issuing magistrate engaged in an improper analysis of the totality of the circumstances since he signed the warrant that was supported by facts constituting illegal activity by the police officers.

Considering the appellee's contention that "the fourth exception is applicable because of Officer Mallory's misleading account of the fact regarding Mr. Darden's withdrawal of consent," the motion to suppress filed by the appellee, as would be expected, asserted that the seizure of the "tangible evidence" was illegal because it was conducted outside the judicial process without prior approval by a judge or magistrate and did not come within one of the recognized exceptions to the warrant requirement. The Court of Appeals in *Connelly v. State*, 322 Md. at 726, 589 A.2d 958, explained the procedure in challenging a warrant asserted to be based on defective probable cause:

> As stated by the Supreme Court in *Franks v. Delaware, supra*, 438 U.S. at 164, 98 S.Ct. at 2680, the bulwark of the Fourth Amendment protection is the Warrant Clause, which requires, absent certain exceptions, that the police obtain a search warrant, based upon a showing of probable cause, before embarking upon a search. In that case, the question before the

---

because there was no reliance on the warrant, there was no factual finding in the hearing on the motion to suppress that any belief by Officers Mallory and Call was reasonable that their detention was legal.

> Court was whether, after a search warrant had been issued, the defendant had a right "to challenge the truthfulness of factual statements made in an affidavit supporting the warrant." *Id.* at 155, 98 S.Ct. at 2676. In concluding that there was such a right, the Court held that "where the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request." *Id.* at 155-56, 98 S.Ct. at 2676. The Court indicated that if the defendant proves at that hearing, by a preponderance of the evidence, "with the affidavit's false material set to one side, [that] the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided." *Id.*

The *Connelly* Court thereafter discussed the scope of review of the asserted defective warrant:

> As Connelly did not request a hearing pursuant to the procedure authorized by *Franks v. Delaware, supra*, and thereby create an evidentiary record with respect to the claimed misrepresentation of the affiants, we are limited to the affidavit itself in determining the applicability of the *Leon* good faith exception.

Id. 322 Md. at 735, 589 A.2d 958.

In the present case, there was neither a request by the appellee or a finding by the judge at the suppression hearing that Darden made a substantial preliminary showing that a false statement knowingly and intentionally or with reckless disregard for the truth had been included in the affidavit supporting the warrant. What the appellee spe-

cifically contended in his motion to suppress (correctly so, we believe) was that the seizure had occurred without the prior approval of the judge who issued the warrant. Accordingly, the trial judge at the suppression hearing made his determination based on the failure to demonstrate articulable reasonable suspicion under *United States v. Place, supra*, and was never presented with the allegation that Officer Mallory, as evidenced by his testimony, knew that the manner in which the bag was seized from Darden as he attempted to walk away was inaccurate as portrayed in the affidavit.

Consequently, assuming, *arguendo*, that the good faith exception was applicable to the case at bar, under *Connelly v. State*, 322 Md. at 735, 589 A.2d 958, we are limited to the affidavit itself in determining whether the *Leon* good faith exception is available to the appellant in this case. The result is that, contrary to appellee's assertion, the reviewing court would be unable to determine the alleged inaccuracy of the facts set out in the warrant since the testimony offered was not pursuant to *Franks*, but rather to demonstrate that the seizure was illegal because it preceded the judicially approved warrant.[5] Notwithstanding that appellee cannot challenge the good faith exception on the basis of the alleged false or misleading version of Darden's withdrawal of his consent and ultimate attempt to leave with the bag, appellant nevertheless can find no solace. As we have stated at the outset, there can be no reliance on a warrant that was nonexistent at the time the bag was seized.

---

[5] *Cf. State v. Jacobs*, 87 Md.App. at 651, 591 A.2d 252, wherein we observed that the evidence extrinsic to the warrant affidavit required at a *Franks* hearing was adduced when the State attempted, in response to the offer of proof by Jacobs, to establish that criminal activity was ongoing, and thus probable cause was not stale. Jacobs had attempted to establish that the probable cause was stale and hence inadequate because the officer knew that Jacobs might move from his residence, the target of the search warrant.

ATTENUATION OF ILLEGALITY

Appellant's alternative argument has commingled the concepts of the good faith exception under *Leon* with the notion of attenuation of taint as delineated in *Wong Sun v. United States, supra*, and explicated in *Alderman v. U.S.*, 394 U.S. 165, 183, 89 S.Ct. 961, 972, 22 L.Ed.2d 176 (1969). Appellant has attempted to set up the good faith exception as a form of attenuation of the illegal seizure and the consequent taint on any evidence obtained either directly or derivatively from that seizure. We have extracted and discussed separately the good faith exception, *supra*, concluding that, under the facts of the instant case, it is simply irrelevant to the question of whether the seizure of the bag in this case comports with the requirements of the Fourth Amendment.

Arrest Warrant

The appellant nevertheless argues that the arrest warrant, admittedly issued after the search warrant had been approved and executed, operated to attenuate any taint from the illegal seizure of the bag. In a somewhat circular and unclear argument, appellant asserts that Darden's arrest was not the result of the detention of the sports bag, but rather the result of the approval by judicial officials of the actions of the police, ostensibly in issuing the arrest warrant and the search warrant. Without benefit of authority, the appellant ultimately concludes that the guns and other evidence found should not have been suppressed because Darden was searched as an incident of the judicially approved arrest. The bedrock of the State's thesis is that somehow the ensuing arrest in no way was the direct or derivative result of the illegal seizure of the bag in the first instance. Judge Moylan, speaking for this Court in the recent decision in *State v. Klingenstein*, 92 Md.App. 325, 360-61, 608 A.2d 792 (1992), opined:

> The "fruit of the poisonous tree" doctrine holds that when the Constitution has been violated in obtaining evidence, such tainted evidence shall not only not be used directly but shall not be used at all. It prohibits not only the direct use of the tainted evidence but also its derivative use. The "fruit of the poisonous tree" doctrine would go further and also bar such derivative uses of such evidence as the exploitation of the knowledge gained so as to develop further leads; or, of pertinence here, the use of such tainted evidence to establish probable cause for the issuance of a subsequent warrant.
>
> . . . .
>
> . . . They are sometimes referred to, in a commonplace flight of rhetoric, as "three ways of unpoisoning the fruit." More aptly, they are three ways of determining that the fruit was not poisoned in the first instance. One of these, not here pertinent, is the "attenuation of taint." Another, also not here pertinent, is "inevitable discovery."
>
> The third of the exemptions, the one that concerns us in this case, is that of "independent source." That a constitutional violation preceded the discovery of the evidence in question does not establish that the constitutional violation caused the discovery. The time sequence does, indeed, establish a presumption to that effect. The State is given the opportunity, however, to demonstrate that the evidence proceeded from an independent source. [Citations omitted.]

It would be folly to suggest that Officers Mallory and Call would have been led to 14808 London Lane, from where Darden was pursued and ultimately apprehended, in the absence of the initial interdiction at the Metro Station. The record before us discloses that the State has not demonstrated that the evidence proceeded from an independent source, nor does it appear that either of the other

two ways of "unpoisoning the fruit" are pertinent here. On the contrary, the record reveals a clear and unbroken chain from the seizure of the bag to the obtention of the search warrant and arrest warrant to the ultimate seizure of the person of Darden and the contraband found on him.

Appellee's Statements

Citing *New York v. Harris*, 495 U.S. 14, 110 S.Ct. 1640, 109 L.Ed.2d 13 (1990), appellant claims that the holding in *Harris* that the warrant requirement for an arrest in the home is imposed to protect the home, distinguishing it from a statement taken outside of the house after *Miranda* warnings have been given, supports its position. Appellant analogizes the exit from the house "necessarily breaking the causal chain between the illegality and any subsequent statement by the suspect" and appellant's belief that a break in causation results from the fact that Darden had been given *Miranda* warnings coupled with his subsequent arrest pursuant to a judicially authorized warrant. Appellant also attempts to distinguish *Dunaway v. New York*, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979), relied upon by the judge who conducted the suppression hearing, on the basis that *Dunaway* was decided prior to the good faith exception; that *Dunaway* involved a warrantless detention of the accused; that the accused in *Dunaway* was himself immediately seized and gave a statement during his detention; and that, in the instant case, "the police took measured steps and sought and obtained approval by judicial authorities on two separate occasions."

Initially, the Supreme Court in *Harris* held that the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home, even though the statement is taken after an arrest is made in the home in violation of *Payton v. New York*, 445 U.S.

573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980).[6] Pivotal to the Court's reasoning was the existence, at the outset, of probable cause and the conclusion that the statement was not the result of exploitation of the illegal arrest under *Payton*. It should be noted that the Court excluded a second statement, finding that its connection with the arrest was not sufficiently attenuated. We fail to see the precise applicability of *New York v. Harris* to the instant case.

Moreover, the Supreme Court, in *Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975), considered a statement that was derivative of an illegal arrest:

> Brown's first statement was separated from his illegal arrest by less than two hours, and there was no intervening event of significance whatsoever. In its essentials, his situation is remarkably like that of James Wah Toy in *Wong Sun*. We could hold Brown's first statement admissible only if we overrule *Wong Sun*. We decline to do so. And the second statement was clearly the result and the fruit of the first.

Id. at 605, 95 S.Ct. at 2262 (footnotes omitted). *See also Ryon v. State, supra.*

While the statement in *Brown* resulted from an illegal arrest as opposed to an illegal seizure, it nonetheless is the end result in a causal chain of events that began with the primary illegality of the officers, *i.e.*, the seizure of the appellee's bag.

Finally, appellant's attempt to distinguish *Dunaway v. New York, supra,* on four different bases is without merit. It is immaterial that the good faith exception to the exclusionary rule was decided after *Dunaway* since, as we

---

[6] The Supreme Court held, in *Payton*, that a warrantless arrest effected within the home is to be viewed with greater circumspection than such arrests in public places because "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." 445 U.S. at 585, 100 S.Ct. at 1379.

have held, the good faith exception is not applicable to the facts of this case in any event. The remaining bases upon which appellant attempts to distinguish *Dunaway* all relate to the actions by the police officers asserted to be intervening steps which appellant argues attenuate the taint of the initial illegal seizure. The short answer to appellant's arguments is that none of these actions on the part of the police constitutes an independent source and in no way can it be suggested that, on this record, the State would have gathered the evidence necessary to proceed against Darden for possession of the contraband contained in the bag when stopped at the Metro Station or the contraband subsequently found on him at the time of his arrest had the illegal seizure of the bag not provided the initial link in the chain of events leading to seizure of evidence of Darden's illegal drug activity. In other words, all of the evidence in this case has indeed "been come at by exploitation of [the primary] illegality." *Wong Sun*, 371 U.S. at 488, 83 S.Ct. at 417.

For the stated reasons, we issued our per curiam order on August 12, 1992, affirming the order of the trial court.

APPENDIX B

In the Court of Appeals of Maryland

Petition Docket No. 406

STATE OF MARYLAND
v.
RICKY DARDEN

September Term, 1992

(No. 278, Sept. Term, 1992, Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari and supplements to the Court of Special Appeals, and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and supplements be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: Nopvember 10, 1992

APPENDIX C

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

CT 91 1894X

STATE OF MARYLAND

Plaintiff

vs.

RICKY DARDEN

Defendant

OPINION

On August 20, 1991 at 1:50 P.M., Officers Mallory and Call of the Metro Transit Police, were conducting an "interdiction operation" for controlled dangerous substances at the New Carrollton Metro Station located at 4300 Garden City Drive, New Carrollton, Prince George's County, Maryland.[1] Both Officers Mallory and Call were in plain clothes. Officer Mallory observed Ricky Darden (hereafter "defendant") get off a southbound train originating in New York City, New York. Defendant was dressed in casual clothes and was carrying a multi-colored sports bag. As he walked by Officer Mallory, defendant looked at him and then proceeded down the escalator. Defendant, while descending the escalator, several times looked nervously over his shoulder [in the direction of Officer Mallory] and then proceeded to the exit door of the station.

As an experienced police officer who had previously conducted drug interdiction operations at the New Carrollton

---

[1] The facts set forth in this Opinion, although disputed, constitute the Court's findings of fact. They are based on testimony and other evidence presented at the suppression hearing in the above-captioned case. At the hearing, Officers Mallory and Call and Defendant testified.

Metro Train Station, Officer Mallory knew that New York City was a "source city" for the distribution of cocaine in the Washington Metropolitan area.

Having observed the defendant's nervous behavior during his traverse down the escalator and towards the exit, Officer Mallory approached defendant and identified himself as a Metro Transit Police Officer. He informed defendant that he was conducting a drug interdiction operation at the train station and asked defendant if he would consent to speak with him. Defendant said "yes, you can talk to me." When he said this, defendant was sweating profusely—even though this seemed to Officer Mallory to be unwarranted by climate conditions—and defendant's speech was nervous, in that his voice "made a popping sound" when he spoke. Officer Mallory inquired as to whether the defendant had a train ticket, and defendant said "no." Officer Mallory remarked that defendant would have needed a ticket to have ridden the train. Officer Mallory then asked defendant for some identification. When defendant opened his wallet, Officer Mallory spotted a train ticket. Officer Mallory pointed out the ticket to defendant and defendant exhibited the ticket to the policeman. The ticket showed it had been purchased in New York City. According to defendant, the ticket had been purchased by his [defendant's] mother. Defendant was asked his name and he told the officer that his name was Ricky Dardon, spelling his surname with an "o." While looking in his wallet, defendant found a laminated pool/playground card which he handed to Officer Mallory. Inspection of the card by Officer Mallory showed that defendant's last name was spelled "Darden", i.e., a different spelling of his last name. The card showed a Bowie, Maryland address. Officer Mallory asked defendant if he had any drugs or large amounts of money in his possession. Defendant answered in the negative. Officer Mallory asked if defendant had packed the bag personally. Defendant said "yes." Officer Mallory then asked if

defendant would consent to a search of his sports bag. Defendant then orally gave his consent to the search.[2] After obtaining consent, Officer Mallory opened the bag and started to slowly and methodically search it. He did this by taking out items of clothing and unrolling them carefully to make sure that there were no drugs in the clothing. Officer Mallory performed this search for about one minute when defendant asked Officer Thomas Call, who was standing nearby, if he was required to consent to the search. Officer Call told defendant that he was free to refuse to allow the search. Upon hearing this, defendant indicated to Officer Mallory that he no longer consented to the search. Officer Mallory thereupon immediately discontinued the search of the bag. Defendant then tried to pick up his bag and leave but Officer Mallory advised defendant that he was going to detain the sports bag for ten to twenty minutes so that a drug dog could sniff the exterior of the bag. Defendant was further advised that he personally was free to go, if he wished; that if defendant left and if the drug dog did not indicate positive on the bag, then the bag would be delivered to defendant's Bowie address. Defendant also was told that he could stay and wait if he chose to do so. After hearing his options, defendant elected to leave the station. Approximately twenty minutes later, a trained "drug dog" arrived and sniffed the exterior of defendant's sports bag. The dog indicated positive on the bag by scratching it—this was the dog's way of communicating the intelligence that there was cocaine inside the bag. Officer Mallory then took the bag to Prince George's County Police Headquarters, where the bag was sniffed by two other trained drug detection dogs. These dogs also gave a positive indication that cocaine was inside the bag. Based on these three positive canine indications, Officer Mallory prepared a search warrant to search the bag.

---

[2] At the suppression hearing, all witnesses agreed that defendant, initially, gave his consent to Officer Mallory to search the bag.

On August 20, 1991, District Court Judge Gerard F. Devlin signed the search warrant prepared by Officer Mallory. After the warrant was executed, Officer Mallory opened the bag and inside found a large quantity of cocaine.

After finding the cocaine, a warrant for defendant's arrest was issued. On August 21, 1991, defendant was arrested as he was emerging from a taxi cab. At the time of his arrest, he was carrying two bags. The bags contained a 9 millimeter loaded pistol, a 25 caliber loaded pistol and triple beam scales.

Shortly after defendant's arrest, he was taken to police headquarters, and, after being given his *Miranda* rights, made inculpatory statements to the police.

Defendant moved to suppress: (1) the cocaine found in the sports bag, (2) the guns, ammunition and scales he was carrying when he was arrested, and (3) the confession given on August 21, 1991.

The Seizure of the Sports Bag

The Fourth Amendment to the Constitution of the United States provides:

> the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath, or Affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

The initial confrontation and questioning of defendant by Officer Mallory was constitutionally permissible, because during the initial confrontation, it would appear to a reasonable person in defendant's position that he had a right, at any time, to terminate the questioning and leave. *United States v. Mendenhall,* 446 U.S. 544, 546 (1980).

Moreover, it is clear that defendant's constitutional rights were not violated when defendant's consent was obtained and Officer Mallory initially started to search the bag pursuant to the consent.

The important question to be addressed is whether, after defendant withdrew his consent to the search, the seizure of defendant's sports bag was reasonable.

To summarize, at the time Officer Mallory detained the bag, the Officer knew the following: (1) defendant had been a passenger on a train which had come from a "source city"; (2) from the time defendant got off the train until the time the bag was seized, defendant was agitated and nervous; (3) that defendant, before producing identification, had misspelled his surname; (4) that defendant had falsely said he did not have a ticket; (5) that defendant had withdrawn his consent to the search immediately upon being made aware of his right to refuse consent; and (6) that although he had searched the bag for about a minute he had not found anything incriminating in it.

When not under the authority of a warrant, supported by probable cause, a seizure of a person's property is *per se* unreasonable under the Fourth Amendment, subject to only a few exceptions. *Riddick v. State,* 319 Md. 180, 192, 571 A.2d 1239 (1990) and cases therein cited. The Fourth Amendment applies equally to the seizure of persons and the seizure of property. *Payton v. New York,* 445 U.S. 573, 585, 100 S.Ct. 1371, 1379, 63 L.Ed. 2d 639 (1980).

In their oral argument, both the State and defendant appear to agree that the focus in this case should be whether the police, at the time the bag was initially seized, had a reasonable, articulable suspicion, premised on objective facts, to believe that the bag contained contraband.

I agree that this is the right test. In the case of *United States v. Place,* 462 U.S 696, 702, 103 S.Ct. 2637, 2642, 77 L.Ed.2d. 110 (1983):

> In this case, the Government asks us to recognize the reasonableness under the Fourth Amendment of warrantless seizures of personal luggage from the custody of the owner on the basis of less than probable cause, for the purpose of pursuing a limited course of investigation, short of opening the luggage, that would quickly confirm or dispel the authorities' suspicion. Specifically, we are asked to apply the principles of *Terry v. Ohio* . . . to permit such seizures on the basis of reasonable, articulable suspicion, premised on objective facts, that the luggage contains contraband or evidence of a crime. *In our view, such application is appropriate.* (Emphasis Supplied).

In *Alabama v. White,* 496 U.S. ___, 110 S.Ct. 2412, 110 L.Ed. 301 (1990), the Court said:

> Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

The Court summarized in *Derricott v. State,* 84 Md. App. 192, 196, 84 Md. App. 192, 196, 578 A.2d 791 (1990), *cert. granted,* 321 Md. 633 (1991):

> On the continuum of escalating likelihood of guilt, the articulable suspicion level is well down the scale from the probable cause level. The settled law that it is a significantly lesser measure of likely guilt was recently rearticulated by Chief Justice Rehnquist in *United States v. Sokolow,* 490 U.S. 1, 7, 109 S.Ct. 1581, 1585, 104 L.Ed.2d 1, 10 (1989):

> The officer, of course, must be able to articulate something more than an 'inchoate and unparticularized suspicion of "hunch." ' . . . The Fourth Amendment requires *'some minimal level* of objective justification' for making the stop . . . . *That level of suspicion is considerably less than proof of wrongdoing by a preponderance of the evidence.* We have held that probable cause means 'a fair probability that contraband or evidence of a crime will be found,' . . . and the *level of suspicion required for a Terry stop is obviously less demanding than that for probable cause.* (Citations omitted). (Emphasis supplied). And, see *Quince v. State,* 319 Md. 430, 433-434, 572 A.2d 1086 (1990).

The *Derricott* Court also said, Page 208 of 84 Md. App.:

> In measuring articulable suspicion, of course, we are actually making and then comparing two measures. Judging Fourth Amendment reasonableness is a balancing process and balancing, by definition, is an exercise in relativity. A minimal justification can outweigh a minimal intrusion just as surely as a weightier justification can outweigh a weightier intrusion. Our concern is not with absolute weight but with relative weight.
>
> On one side of the scale is both the public interest in curbing crime and police expertise in evaluating evidence.
>
> The concurring opinion of Justice Powell in *United States v. Mendenhall,* 446 U.S. 544, 565-566, 100 S.Ct. 1870, 1883, 64 L.Ed.2d 497, 517 (1980), spoke of the significance of both of these factors:
>
> The jurisprudence of the Fourth Amendment demands consideration of the public's interest in

> effective law enforcement as well as each person's constitutionally secured right to be free from unreasonable searches and seizures. In applying a test of 'reasonableness,' courts need not ignore the considerable expertise that law enforcement officials have gained from their special training and experience.

The six facts (summarized above) which Officer Mallory had before him prior to seizing the bag will be analyzed individually and collectively using the "reasonable, articulable suspicion" standard.

First of all, the fact that defendant had only one small piece of luggage is not markedly unusual. Defendant's trip was only two hundred miles (approximately) in length and took only about four hours. Common sense would indicate that many people would make such a trip with only a small bag or parcel.[3]

The fact that a person fails to give consent for a search or, having given it, withdraws that consent, does not give reasonable, articulable suspicion sufficient to justify seizing a person's belongings.[4] *Snow v. State*, 84 Md. App. 243, 262, 578 A.2d 816 (1990).

The fact that defendant was very nervous in the presence of police officers coupled with the fact that he had come from a "source city" does not give the police rea-

---

[3] I find the police officers who testified to be generally honest and credible. However, a portion of the police testimony might suggest to a reader that the officers thought that possession of such scant luggage highly unusual. The testimony in this regard was halting, inexact, and, overall, not persuasive. I choose to believe that while most passengers carry more luggage than defendant, many train passengers on this route carried as little luggage as defendant.

[4] The Court said in *Snow*, Page 262 of 84 Md. App. "A Citizen's exercise of his Fourth Amendment right to be free from unwarranted searches does not trigger a reasonable suspicion that he or she is carrying narcotics."

sonable, articulable suspicion that his bags contained drugs. *United States v. Haye*, 825 F.2d 32 (4th Cir. 1987); *Snow, supra*, at P. 253 of 84 Md. App.

The fact that defendant gave the police false information as to the correct spelling of his surname, while suspicious, does not amount to articulable suspicion that the *bag* may contain drugs.

Trial Courts have been instructed to consider six factors in determining whether there is reasonable, articulable suspicion, viz: 1) appearance, 2) conduct, 3) criminal record, 4) environment, 5) police purpose and 6) source of information. *Watkins v. State*, 288 Md. 597, 603, 420 A.2d 270 (1980); *Mosely v. State*, 45 Md. App. 88, 92-93, 411 A.2d 1081 (1980), aff'd, 289 Md. 571, 425 A.2d 1039. Except for nervousness, there was nothing unusual about defendant's appearance. Defendant's conduct was non-criminal although he did give the police false information. Defendant's lies, however, did not directly concern the bag nor would they reasonably focus one's attention on the bag.[5] The police had no knowledge regarding defendant's criminal record. The environment (train station) was not shown to be an area of high drug activity or otherwise suspicious or disreputable. It was more akin to the place where appellant was arrested in *Snow, supra* [defendant on a major highway that was a route from Philadelphia (a source city) to Washington, D.C. (user city). The police purpose was to interdict drugs. What was said in *Snow, supra*, at Page 263 regarding factor (5), is here relevant:

> Although possessing drugs or intending to distribute drugs is clearly a crime which may be associated with violence, it is not inherently vi-

---

[5] The number and scope of the lies told to the investigating officer here, does not compare with the widespread prevarication visited upon the investigating officer in *Grant v. State*, 55 Md. 1 (1983). Moreover, unlike this case, the lies told by the defendant in *Grant* would inexorably lead a trained officer to focus on the luggage.

> olent like robbery which was at issue in *Mosely*. Thus, the type of intrusion which occurred here did not involve a "severe" crime which required only minimal articulable suspicion; the search here required more justification than did the stop in *Mosely*.

Regarding the sixth factor, Officer Mallory was the first-hand source of the knowledge which does lead to the conclusion that the observations he made were reliable. *Snow, supra.*

Taken individually, none of the facts in Officer Mallory's possession gave rise to reasonable, articulable suspicion that defendant's bag contained drugs.

A separate question is presented, however, as to whether, collectively, the facts gave rise to a reasonable, articulable suspicion. In applying this test, the Court must use a sliding scale—a scale which weighs the amount of intrusion against the amount of suspicion present. *Derricott, supra* at Page 208 of 284 Md.

Here the amount of intrusion is not *de-minimus* or inconsequential trial. It is not inconsequential to detain a traveler's luggage ten to twenty minutes while the police await the arrival of canine. Such delays are insulting and inconvenient and, in my opinion, are the type of infringement of freedom which the Fourth Amendment was designed to prevent. On the other side of the scale, a serious drug epidemic exists creating enormous societal problems; however, the amount of justification for the detention of the bag is zero, or close to zero and under *Snow, supra,* more than minimal justification is needed. In this case, the police did not testify that defendant, in either appearance or actions, met any recognized "drug courier profile." In fact, neither Officer Call or Officer Mallory gave *any* testimony as to why, as trained officers, they

suspected[6] that the bag contained narcotics. Compare, *Grant v. State,* 55 Md. App. 1, 21-22, 461 A.2d 524 (1983), where the Court admonished trial judges to give "special credence" to the expertise of police officers.

Collectively, the police did not have "reasonable, articulable suspicion, premised on objective facts, that the luggage contained contraband or evidence of a crime." *United States v. Place, supra.* There was no more reason to suspect that the bag contained drugs than to suspect that there were drugs on defendant's person, yet defendant was allowed to leave. The suspicion here amounted only to "unparticularized suspicion or hunches" [*United States v. Sokolow,* 490 U.S. 1, 11, 109 S.Ct. 1581, 104 L.Ed 241, 10 (1989)] which is insufficient justification to seize a persons effects under the Fourth Amendment.

For these reasons, the seizure of the bag [to await the drug dogs] was illegal.

The Search Warrant

The State argues that even if the police did not have grounds to seize the bag, the search was valid based on the good-faith reliance by the police on the search warrant. This contention would have merit only if the facts set forth in the warrant had an independent source, i.e., a source not tainted by the illegal detention of defendant's bag. *Silverthorne Lumber Co. v. United States,* 251 U.S. 385, 64 L.Ed. 319, 40 S.Ct. 182 (1920). *Wong Sun v. United States,* 371 U.S. 471, 9 L.Ed. 2d 441, 83 S.Ct. 407 (1963). The facts set forth in the warrant signed by Judge Devlin were developed only as a result of the illegal seizure. Therefore, the State is not aided by the fact a warrant was signed.

---

[6] The fact that the officers suspected that the bag contained drugs is only implied by the testimony. Neither Officers Call nor Mallory specifically said what they suspected.

Items Seized at Time of Defendant's Arrest

The arrest of defendant came about as a direct result of the illegal seizure of his bag. The "fruits of the poisonous tree" doctrine bars admission of items seized when defendant was arrested. *Wong Sun, supra.* The State has made no showing that the taint caused by the illegal detention of the bag has been sufficiently attenuated to allow into evidence items seized upon defendant's arrest. *United States v. Ceccolini,* 435 U.S. 268, 55 L.Ed. 268, 98 S.Ct. 1054 (1973).

Defendant's Confession

In *Dunaway v. New York,* 442 U.S. 200, 60 L.Ed. 2d 824, 99 S.Ct. 2248 (1979), the Court held that the statement of a suspect detained and taken in for questioning, but not formally arrested, who latter confessed after being given his *Miranda* rights, should be suppressed. The Court said:

> When there is a close casual connection between the illegal seizure and the confession, not only is the exclusion of the evidence likely to deter similar police misconduct in the future, but use of the evidence is more likely to compromise the integrity of the Courts. *Id.* at Page 218 of 442 U.S.

The *Dunaway* Court later said:

> The situation in this case is virtually a replica of the situation in *Brown.* Petitioner was also admittedly seized without probable cause in the hope that something might turn up, and confessed without an intervening event of significance. Nevertheless, three members of the [New York] Appellate Division purported to distinguish *Brown* on the ground that the police did not threaten or abuse petitioner (presumably putting aside his illegal seizure and detention) and that the police

> conduct was "highly protective of defendant's Fifth and Sixth Amendment rights." . . . This betrays a lingering confusion between "voluntariness" for purposes of the Fifth Amendment and the "causal connection" test established in *Brown*. Satisfying the Fifth Amendment is only the "threshold" condition of the Fourth Amendment analysis required by *Brown*. No intervening events broke the connection between petitioner's illegal detention and his confession. To admit petitioner's confession in such a case would allow "law enforcement officers to violate the Fourth Amendment with impunity, safe in the knowledge that they could wash their hands in the 'procedural safeguards' of the Fifth." *Id.* at 238, 239 of 442 U.S.

What was said in *Dunaway* is here apposite. The confession of defendant must be suppressed.

/s/ James P. Salmon
JAMES P. SALMON, JUDGE

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND

Plaintiff

vs.

RICKY DARDEN

Defendant

ORDER

For the reasons set forth in an Opinion of even date herewith, it is this 6th day of February, 1992, by the Circuit Court for Prince George's County, Maryland,

ORDERED, that defendant's Motion To Suppress is granted; and it is further,

ORDERED, the following will not be allowed into evidence at the trial of defendant's case:

(1) all items found within defendant's sports bag on August 20, 1991;

(2) all items seized upon defendant's arrest on August 21, 1991;

(3) the confession given by defendant to the police on August 21, 1991.

/s/ James P. Salmon
JAMES P. SALMON, JUDGE

Copies sent by Court to:

Assignment Office

Laura Pellatiro, Esquire
Assistant State's Attorney
Courthouse
Upper Marlboro, Maryland 20772

Don Edward Ansell, Esquire

14416 Old Mill Road, Suite 101
Upper Marlboro, Maryland 20772

/s/ Janet Queen 2/6/92
Administrative Aide Date

APPENDIX D

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND
IN THE DISTRICT COURT OF MARYLAND, DISTRICT 5

SEARCH WARRANT

TO OFFICER T.E. MALLORY #326, DRUG INVESTIGATION UNIT, METRO TRANSIT POLICE DEPARTMENT.

Whereas it appears to me, the subscriber, Gerard T. Devlin, a Judge of the Circuit Court for Prince George's County, Maryland / District Court of Maryland, District 5, by the written affidavit of the applicant herein, OFFICER T.E. MALLORY #326, DRUG INVESTIGATION UNIT, METRO TRANSIT POLICE DEPARTMENT a copy of which is attached hereto and made a part hereof, that there is probable cause, the basis of which is set forth in said Affidavit, to believe that certain property subject to seizure under the laws of this State and more particularly in violation of **ARTICLE 27, SECTION 286,** Annotated Code of Maryland, situated or located at:

Multi-colored sports bag, 7600 Barlowe Road, Palmer Park, Prince George's County, Maryland.

You are therefore commanded, with the necessary and proper assistants, to search forthwith the said premises located at **7600 Barlowe Road, Palmer Park, Prince George's County, Maryland** for the property specified, to wit:

any and all controlled dangerous substances, in whatever form, condition or however packaged, and to seize such paraphernalia that is used in the administration, preparation, and distribution or in conjunction with said illegal activities. To seize any books, records, firearms and documents relating to the acquisition, possession or distribution of said controlled dangerous substances. To open any and all safes, locked boxes and receptacles and to

seize contents which pertain to the said illegal operation. To view all non-commercially produced video tapes and to review all answering machine tapes for evidence of said illegal operation. To seize any records, documents or evidence to prove possession or ownership of the premises for which this warrant is sought, and to search any and all persons found to be involved in said illegal activities.

and if property be found there to seize it and to seize any property found liable to seizure under the laws of this State leaving a copy of this Warrant and a written inventory of the property taken, and return this Warrant to me, the subscriber, or in my absence to any Judge of this Circuit Court / District Court within ten days from the date of the execution of this Warrant together with a copy of the written inventory of the property taken, as required by law.

Here fail not at your peril and have you then and there this Warrant.

Given under my hand this 20th day of August, 1991.

/s/ Gerard T. Devlin
JUDGE

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND
IN THE DISTRICT COURT OF MARYLAND, DISTRICT 5

APPLICATION FOR SEARCH WARRANT

By OFFICER T.E. MALLORY #326, DRUG INVESTIGATION UNIT, METRO TRANSIT POLICE DEPARTMENT

The affiant hereby makes application to Gerard T. Devlin, a Judge of the Circuit Court for Prince George's County, Maryland / District Court of Maryland, District 5, for a search warrant on the grounds that there is probable cause, the basis of which is set forth in the following Affidavit which is attached hereto and made a part hereof, to believe that there is property subject to seizure under the laws of this State and more particularly in violation of **ARTICLE 27, SECTION 286** Annotated Code of Maryland, situated or located at:

Multi-colored sports bag, 7600 Barlowe Road, Palmer Park, Prince George's County, Maryland.

In support of said Application for Search Warrant Affiant being duly sworn deposes and says:

That your affiant is a Police Officer with the Metro Transit Police Department, Maryland, and has been employed by said department for a period of over seven (7) years. That your affiant is currently assigned to the Drug Investigation Unit as a narcotics investigator. That your affiant had received training in general law enforcement and in narcotic law enforcement from the Northern Virginia Police Training Academy and comparative compliance courses in Washington, D.C. and Maryland. That your affiant has furthered his training in narcotics law enforcement by attending classes given by the Department of Justice, Drug Enforcement Administration. That your affiant had conducted numerous investigations for violations of the Maryland Controlled Dangerous Substance Act and for violations of the Washington, D.C. Controlled Dangerous Substance

Act and these investigations have resulted in the arrests of persons for violations of the Maryland Controlled Dangerous Substance Act. That your affiant's testimony in said arrests have been accepted by the courts of the State of Maryland and have resulted in the convictions of said persons for violations of the Controlled Dangerous Substance Act of the State of Maryland.

That on August 20, 1991 your affiant was conducting interdiction operations for controlled dangerous substances at the New Carrollton Metro Station, 4300 Garden City Drive, New Carrollton, Prince George's County, Maryland. That at approximately 1350 hours, your affiant observed a black male who later identified himself as Ricky Darren exit a south bound train originating in New York City, New York. Your affiant knows based on training and experience that New York City, New York is a source city of cocaine for the Washington metropolitan area. Your affiant also knows based on training and experience that the New Carrollton Metro Station is commonly used by those involved in the distribution and trafficking of controlled dangerous substances to transport controlled dangerous substances from New York City, New York as well as other source cities. That your affiant has conducted interdiction operations at the New Carrollton Metro Station resulting in the seizure of controlled dangerous substances and the arrest of those persons involved in the trafficking of controlled dangerous substances.

That your affiant observed the said black male walk from the platform area to the mezzanine level. During this short walk, the said black male appeared nervous and turned back looking towards your affiant four times. As the said black male walked through a doorway leading to the ground floor of the metro station, the said black male turned again looking at your affiant. At that time, the said black male was shaking. Your affiant approached the said black male and identified myself as a Metro Transit Police Officer and advised the said black male that your

affiant was conducting drug interdiction operations. Your affiant asked the said black male if your affiant could speak with the black male, at which time the said black male stated "Yes, you can talk to me". Your affiant then asked the black male if he had a train ticket. The black male stated that he did not have one. Your affiant informed the black male that he needed a ticket to ride the train. The black male then opened his wallet. Your affiant noticed that the black male's hands were shaking and he was sweating profusely. The said black male located the train ticket in his wallet. Your affiant asked the black male if he had purchased the ticket. The black male stated that his mother had purchased the ticket for him. Your affiant then asked the black male his name at which time the black male stated that his name was Ricky Dardon, spelling the name. Your affiant asked the black male if he had any identification. The black male stated "yes" and handed your affiant an unofficial laminated card bearing the name Ricky Darden with a different spelling then the name he spelled out. Your affiant then asked Ricky Darden where he was going at which time he stated that he was going to London Lane, Bowie, Prince George's County, Maryland. Your affiant asked Ricky Darden if he had any drugs or large amounts of United Stated currency in his possession. Ricky Darden stated that he didn't have any drugs or large amounts of money on him. Your affiant then asked Ricky Darden for consent to search the sports bag that he was carrying. That Ricky Darden stated that your affiant could search the bag. Your affiant then started to open the main pouch of the bag and began to search the said pouch. That Ricky Darden then grabbed the bag, stated that your affiant could not search the bag any more and started to walk away. At that point all searching of the said bag ceased and your affiant informed Ricky Darden that he intended to temporarily detain the bag until a narcotic detection dog could respond to the train station. Your affiant further advised Ricky Darden that he was

free to leave or stay as he wished. That your affiant further stated to Ricky Darden that if he wished to stay and the inspection of the bag by the narcotic detection dog proved negative, he could take possession of the said bag. Your affiant then asked Ricky Darden for his address again at which time he stated that he lived at 10848 London Lane, Bowie, Prince George's County, Maryland. Your affiant determined that there is no 10800 block of London Lane, only a 14000 block.

Your affiant requested a narcotic detection dog to respond to the scene. At approximately 1420 hours, Officer Chandler #176 and dog "Wolf" responded. That "Wolf" performed an inspection of the said bag having a positive indication that controlled dangerous substances were concealed inside of the said bag.

Your affiant then took the said sports bag to the Prince George's County Police Station, District III, 7600 Barlowe Road, Palmer Park, Prince George's County, Maryland. That while at that location, Detective Logue #1217, Narcotic Detection Dog handler, Prince George's County Police Department and his drug detection dog "Chip" performed an inspection of the said bag. That "Chip" gave a positive indication that controlled dangerous substances were concealed inside of the said bag.

Based on the merits of this affidavit, your affiant believes that Controlled Dangerous Substances are concealed inside of the said sports bag and your affiant prays a search and seizure warrant be issued for the said sports bag.

Telephonically approved by ASA Kathy Evans 8-20-91 1805 hours.

Wherefore your affiant hereby makes application and prays that a Search Warrant be issued authorizing him, with necessary and proper assistants, to search the said premises located at:

Multi-colored sports bag, 7600 Barlowe Road, Palmer Park, Prince George's County, Maryland.

for the property specified, to wit:

any and all controlled dangerous substances, in whatever form, condition or however packaged, and to seize such paraphernalia that is used in the administration, preparation, distribution or in conjunction with said illegal activities. To seize any books, records, firearms, and documents relating to the acquisition, possession or distribution of said controlled dangerous substances. To open any and all safes, locked boxes and receptacles and to seize contents which pertain to the said illegal operation. To view all non-commercially produced video tapes and to review all answering machine tapes for evidence to prove possession or ownership of the premises for which this warrant is sought, and to search any and all persons found to be involved in said illegal activities.

and if the property be found there to seize it and to seize any property found liable to seizure under the laws of this State. I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing document are true and correct.

/s/ T.E. Mallory
(Signature of Affiant)

OFFICER T.E. MALLORY #326, PRINCE GEORGE'S COUNTY POLICE DEPARTMENT

Subscribed and sworn to before me this 20th day of August, 1991.

/s/ Gerard T. Devlin
JUDGE